

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

SAMSON MOTORCYCLE
PRODUCTS, INC.
3818 East Coronado Street
Anaheim, CA 92807

Employer

Docket Nos. 03-R3D1-1108
and 1109

**DENIAL OF PETITION
FOR RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code hereby denies the petition for reconsideration filed in the above entitled matter by Samson Motorcycle Products, Inc. (Employer).

JURISDICTION

Commencing on September 13, 2002, a representative of the Division of Occupational Safety and Health (the Division) conducted an accident inspection at a place of employment maintained by Employer at 3818 E. Coronado St., Anaheim, California.

On March 7, 2003, the Division issued a citation to Employer alleging a serious violation of section 3273(i) [guard on machinery], and a citation alleging general violations of section 2340.17 [guard on energized parts of equipment] and section 4650(c) [secured compressed gas tanks] of the occupational safety and health standards and orders found in Title 8, California Code of Regulations.¹ The Division proposed civil penalties totaling \$16,520 for the alleged violations.

Employer initiated appeals with the Board by submitting completed appeal forms on March 12, 2003.

Following a pre-hearing conference before a Board ALJ, Employer moved to withdraw its appeals. On January 20, 2004, the ALJ granted the motion and issued an order disposing of the appeals which provided for assessment of

¹ Unless otherwise specified all section references are to Title 8, California Code of Regulations.

the proposed civil penalties. The order was served on the parties on January 20, 2004.

On March 3, 2004, Employer mailed a letter petition for reconsideration (dated February 23, 2004) requesting "another appeal" for the subject citations. Employer asserts that, prior to the accident inspection which gave rise to the citations which were appealed in this case, the Division had issued a Notice of No Accident-Related Violation After Inspection following a previous accident in the same area as the instant violations. Employer's representative alleges he did not know of this previous determination by the Division which involved an area only a few feet from the machine which was the subject of the instant citations. The Division filed an answer to the petition on April 8, 2004.

ISSUE

Does the Appeals Board have jurisdiction to entertain Employer's petition for reconsideration?

REASON FOR DENIAL OF PETITION FOR RECONSIDERATION

Labor Code section 6614(a) sets forth the deadline for filing a petition for reconsideration from an Administrative Law Judge's (ALJ) decision or an order of the Board:

At any time within 30 days after the service of any final order or decision made and filed by the appeals board or a hearing officer, any [aggrieved] party...may petition the appeals board for reconsideration.... Such petition shall be made only within the time and in the manner specified in this chapter.

A regulation of the Board provides that "[t]he petition for reconsideration shall be filed at the Appeals Board in Sacramento, California, and shall be deemed filed on the date it is *delivered or mailed* to the Appeals Board." (§ 390(a) italics added) Further, "[u]nless otherwise indicated by proof of service, if the envelope was properly addressed, the mailing date shall be presumed to be: (1) the postmark date appearing on the envelope if first-class postage was prepaid; or (2) the date of delivery to a common carrier promising overnight delivery as shown on the carrier's receipt." (§ 348(b))

In the present case, the ALJ's order containing the disposition of the appeals was served by regular mail on the parties on January 20, 2004. Because the order was served by mail, the time for filing a petition for reconsideration was extended by 5 days. (See § 348(c).) Thus, the last day to file a petition for reconsideration challenging the order was February 24, 2004,

which was 35 days after service of the order. The petition for reconsideration did not include a proof of service and was mailed by regular first-class mail to the Board on March 3, 2004 as indicated by the postmark which controls as the filing date pursuant to section 348(b). Thus, the petition was filed 8 *days* past the statutory deadline.

Longstanding Board precedent establishes that the Board does not have jurisdiction to accept the petition. The Board has consistently held that the requirement that a petition for reconsideration be mailed or delivered to the Board within 30 days of the issuance of the decision or order to be reconsidered is jurisdictional and the Board is without power to enlarge the time for the filing of a petition for reconsideration. (*Unocal Corporation*, Cal/OSHA App. 92-639, Denial of Petition for Reconsideration (May 13, 1993) citing *Dalton Construction Company*, Cal/OSHA App. 83-987, Denial of Petition for Reconsideration (Feb. 7, 1985).) The deadline for filing a petition for reconsideration is jurisdictional and even a petition filed one day beyond the deadline must be denied. (See *Beutler Heating & Air Conditioning, Inc.*, Cal/OSHA App. 93-2220, Denial of Petition for Reconsideration (Mar. 16, 1995) and *Edwin D. Chapman*, Cal/OSHA App. 81-331, Denial of Petition for Reconsideration (Oct. 1, 1981).)

Petitions for reconsideration filed with this Board must comply with section 390.3(a) which states: “[i]f within 30 days of the filing of an order or decision no petition for reconsideration has been filed, and no reconsideration has been ordered on the Appeals Board’s own motion, the order or decision is a *final order* of the Appeals Board and not subject to review by any court or agency.” (Italics added.)

The courts and other adjudicatory agencies have reached the same conclusion when interpreting similar statutory filing deadlines. It is well established that if a time limitation for filing a document with an agency is jurisdictional, and a document is filed beyond the time limit, neither the agency nor a court may grant relief since they lack jurisdiction over the matter. See *Humbert v. Castro Valley Co. Fire Protection Dist.* (1963) 214 Cal.App.2d 1, 9.

The Board finds that Employer did not file its petition for reconsideration within the statutorily prescribed time. Therefore, the Board is without jurisdiction to review the order issued January 20, 2004. Accordingly, the order is final and not subject to review by any court or agency.

Employer’s petition was unverified. Labor Code section 6616 requires verification of petitions for reconsideration. The petition also was not served on the Division as required in Labor Code section 6619 at the time it was

originally filed with the Board.² Employer did not file a timely verification and proof of service with the Board although it should be noted that the timely filing of those documents would not change the Board's decision in this case.

DECISION

Based upon the above, the petition for reconsideration is denied as untimely. The Board does not have jurisdiction to re-open the now final Order which both granted Employer's motion to withdraw its appeals and assessed civil penalties totaling \$16,520.

MARCY V. SAUNDERS, Member
GERALD PAYTON O'HARA, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: April 21, 2004

² A letter from the Board explaining the verification and proof of service requirements was sent to Employer on March 25, 2004. The letter contained a sample verification and proof of service as an enclosure and had a five-day deadline to respond. The letter also indicated that Employer's petition would be subject to dismissal if no response was received. Employer responded by submitting copies of its petition for reconsideration addressed to the Division's two legal units and the district manager with a "cc" at the bottom to the appeals board. This did not meet the requirements of a proof of service as specified in section 355(e). No verification was received by the Board.